

FAX RECEIVED
JAN 10 2009

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

First Named Applicant: Walker)	Art Unit: 3763
)	
Serial No.: 09/939,239)	Examiner: Desanto
)	
Filed: August 24, 2001)	001/017 (1-3) USA
)	
)	January 10, 2009
)	750 B STREET, Suite 3120
)	San Diego, CA 92101
)	

PETITION TO STRIKE PRIOR TO TRANSFER OF JURISDICTION TO THE BOARD

Commissioner of Patents and Trademarks
Washington, DC 20231

Dear Sir:

Fee: The Commissioner is authorized to charge deposit account no. 501167 \$400 for the petition fee under Rules 17(f) and 182; Petitioner requests that the fee be refunded upon a decision favorable to Petitioner.

The paper dated January 7, 2009 ("the paper") responding to the Reply Brief is unauthorized. Accordingly, Petitioner requests that it, along with the prior such paper improperly explicating on the prior Reply Brief be stricken from the file.

As mandated by 37 C.F.R. §41.43, there are only two types of responses permitted to a Reply Brief beyond mere acknowledgement - withdrawing the rejections or filing a Supplemental Examiner's Answer, see also MPEP §§1207.05 and 1208. The paper is neither, not being characterized or formatted as a "Supplemental Examiner's Answer" or bearing the requisite Technology Center Director permission for a Supplemental Examiner's Answer. Instead, the paper is an *ultra vires* mini-essay that is entitled to no weight

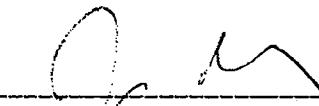
1156-017.PET

CASE NO.: 001/017
Serial No.: 09/939,239
January 10, 2009
Page 2

PATENT
Filed: August 24, 2001

or consideration, being beyond the scope permitted by Patent Office rules, and for this reason should be stricken from the record.

Respectfully submitted,



John L. Rogitz
Registration No. 33,549
Attorney of Record
750 B Street, Suite 3120
San Diego, CA 92101
Telephone: (619) 338-8075

JLR:jg

1156-017.PET

*** RX REPORT ***

RECEPTION OK

TX/RX NO 5389
RECIPIENT ADDRESS 619 338 8078
DESTINATION ID
ST. TIME 01/10 11:20
TIME USE 00'25
PGS. 2
RESULT OK

FAX RECEIVED
JAN 10 2009